

**PUBLIC UTILITIES COMMISSION**

505 VAN NESS AVENUE  
SAN FRANCISCO, CA 94102-3298



October 4, 2002

Agenda ID #1181

TO: PARTIES OF RECORD IN PETITION 02-05-060

This is the draft decision of Administrative Law Judge (ALJ) Simon. It will not appear on the Commission's agenda for at least 30 days after the date it is mailed. The Commission may act then, or it may postpone action until later.

When the Commission acts on the draft decision, it may adopt all or part of it as written, amend or modify it, or set it aside and prepare its own decision. Only when the Commission acts does the decision become binding on the parties.

The service list in this proceeding has been revised on the basis of response to the ALJ's Ruling of July 12, 2002 initiating revision of the service list. Parties to the proceeding may file comments on the draft decision as provided in Article 19 of the Commission's "Rules of Practice and Procedure." These rules are accessible on the Commission's website at <http://www.cpuc.ca.gov>.

Pursuant to Rule 77.3 opening comments shall not exceed 15 pages. Finally, comments must be served separately on the ALJ and the assigned Commissioner, and for that purpose I suggest hand delivery, overnight mail, or other expeditious method of service.

/s/ CAROL A. BROWN  
Carol A. Brown, Interim Chief  
Administrative Law Judge

CAB:tcg

Attachment

Decision **DRAFT DECISION OF ALJ SIMON** (Mailed 10/4/2002)

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Petition by Arthur Crittenden to Institute a Quasi-Legislative Procedure to Allow California Utilities to Place Third-Party Literature into Their Billing Statement Envelopes.

Petition 02-05-060  
(Filed May 30, 2002)

**DECISION DENYING PETITION**

**Summary**

The above-captioned Petition, filed by Arthur Crittenden (Crittenden) pursuant to Public Utilities Code Section 1708.5, is denied. Crittenden's proposal that the Commission develop rules to allow utilities to charge third parties to include those parties' advertising inserts in utility bills does not enhance consumer information about the utilities and their services and does not address any current need of utilities or consumers. We decline to commit the Commission's limited resources to develop the program that Crittenden suggests.

**Background**

On May 30, 2002, Crittenden filed a Petition to institute a rulemaking to allow the inclusion of third-party advertising material in utility billing envelopes. Several utilities filed responses in accordance with Rule 47(f) of the Commission's Rules of Practice and Procedure. Pacific Gas and Electric Company filed a response on June 27, 2002; Southern California Edison Company filed a response on June 27, 2002; San Diego Gas & Electric Company and Southern California Gas Company jointly filed a response on July 1, 2002; AT&T Communications of

California, Inc. filed a response on July 11, 2002; and Verizon California, Inc. filed a response on July 11, 2002.<sup>1</sup> After being granted permission to file a reply to the responses pursuant to Rule 47(g), Crittenden filed his reply on July 15, 2002.

### **Discussion**

This Petition seeks a rulemaking that would establish a framework for utilities voluntarily to include third-party advertising in billing envelopes. As described by the Petition and amplified by Crittenden's reply, the proposed advertising program would consist of utilities accepting or rejecting advertising inserts organized and packaged by advertisers and/or advertising brokers on a month-by-month basis. Crittenden asserts that, nationwide, about 300 million bills a month, sent by a wide range of regulated and non-regulated entities, contain such inserts. He estimates that advertising inserts in all bills from California utilities could generate about \$4,000,000 in revenue annually for the utilities.

Crittenden envisions an advertising insert program as a simple matter of the utilities charging advertisers for their trouble in inserting ads into billing envelopes in months when there is space for the extra insert. The reality of utility billing envelopes is not, however, so simple. The envelope has important communication functions for customers and for the Commission. First and foremost, the bill notifies customers about their utility usage, available programs, and service options. In addition, utilities are required to notify customers of proposed rate changes through bill inserts; utilities also are often required to use bill inserts to notify customers of public participation hearings, evidentiary hearings, and other events set by the Commission. While the presence of

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<sup>1</sup>An administrative law judge's ruling dated July 1, 2002 extended the deadline for responses to July 11, 2002.

unrelated advertising would not necessarily be destructive of those mandated functions, it could interfere with them in ways that would need careful exploration in any rulemaking. Moreover, a rulemaking would have to take account of the Commission's existing affiliate transaction rules, set out in D.97-12-088 (77 CPUC 2d 446), as modified by D.98-08-035 (81 CPUC 2d 607), and integrate the rules for the advertising program proposed by the Petition with them.

We already have a mechanism by which utilities wishing to conduct advertising or sales unrelated to their provision of utility services can do so. Southern California Gas, for example, has filed an advice letter describing a program to solicit newspaper subscriptions. We reviewed that proposal and approved it with a variety of detailed requirements.<sup>2</sup> When Southern California Edison proposed a newspaper subscription solicitation program, on the other hand, we did not approve it.<sup>3</sup> This case-by-case method of addressing specific requests by utilities would also appear to be adequate to address a request by a utility to include third-party advertising in its billing envelopes.

Finally, we note that a previous order by the Commission requiring utilities to carry specific inserts in their bills was overturned by the U.S. Supreme Court in *Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1 (1986). Therefore, as all the utilities point out in their responses to the Petition, any program established through Crittenden's proposed rulemaking would have to be completely voluntary, both as to the utilities' participation and as to the content of advertising they would send out. None of the utilities,

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<sup>2</sup> Res. G-3273 (March 2, 2000).

<sup>3</sup> Res. E-3697 (Sept. 19, 2002).

however, is volunteering. Although lack of enthusiasm from the utilities is not in itself a reason to reject the requested rulemaking, it suggests that the proposed rulemaking would not address any current regulatory problem. In light of the complex issues that such a rulemaking would need to address, the utilities' lack of interest in it supports our view that scarce Commission resources are better spent on other projects.

**Comments on Draft Decision**

The draft decision in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g) and Rule 77.7 of the Rules of Practice and Procedure.

**Assignment of Proceeding**

Commissioner Carl Wood is the assigned Commissioner and Administrative Law Judge (ALJ) Anne E. Simon is the assigned ALJ in this proceeding.

**Findings of Fact**

1. No California utility has proposed a program of third-party advertising inserted in utility billing envelopes.
2. A rulemaking to govern a third-party advertising program like that proposed in the Petition would involve complex issues related to the statutory and practical functions of the utility bill insert in California, the application of the Commission's affiliate transaction rules, and the utilities' control over the content of advertising materials.
3. The Commission would need to devote substantial resources to the rulemaking proposed in the Petition.

**Conclusions of Law**

1. The Commission has discretion to deny the petition.
2. The petition should be denied, effective immediately, in order to conserve the Commission's resources for more significant regulatory efforts.

**O R D E R**

**IT IS ORDERED** that:

1. Petition 02-05-060 is denied.
2. Petition 02-05-060 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.